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2013 IL App (3d) 120474-U

Order filed December 20, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court
	) of the 14th Judicial Circuit,
Plaintiff-Appellee,	) Whiteside County, Illinois,
	)
v.	) Appeal No. 3-12-0474
	) Circuit No. 09-CF-134
	)
JAMES M. MORENO,	) Honorable
	) John L. Hauptman,
Defendant-Appellant.	) Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Carter and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not err in denying defendant's motion to withdraw guilty plea.

¶ 2 Pursuant to a negotiated plea agreement, defendant, James M. Moreno, pled guilty to two counts of aggravated criminal sexual abuse. 720 ILCS 5/12-16(d) (West 2008). He was sentenced to concurrent sentences of 25 years of imprisonment. Defendant filed a motion to withdraw guilty plea, which the trial court denied. Defendant appealed, arguing that the trial court abused its discretion in denying his motion to withdraw guilty plea because defendant had

involuntarily pled guilty under extreme duress. We affirm.

¶ 3

### FACTS

¶ 4 On March 25, 2009, defendant was charged with two counts of aggravated criminal sexual abuse in this case. The counts alleged that on two dates in December of 2007, defendant penetrated the victim's vagina with his penis when the victim was between the age of 13 and 17.

¶ 5 On April 30, 2009, the parties informed the trial court that they had reached a plea agreement. The prosecutor stated the agreement was that defendant would plead guilty in exchange for concurrent 25-year terms of imprisonment, 4 years of mandatory supervised release (MSR), the dismissal of case Nos. 08-CF-500 and 09-CF-181, payment of court costs, and \$200 fines on each count. The prosecutor also agreed not to prepare certain paperwork for two weeks so that defendant could remain in the Whiteside County jail before being transported to the Department of Corrections.

¶ 6 Defendant's attorney, Elwin Neal, additionally clarified that the State agreed not to pursue any additional investigations that were "currently under way, or that [were] within the State's Attorney's knowledge." The prosecutor indicated that "any information, any investigations that [he was] aware of for which in [his] opinion there would be anything close to probable cause [had] been filed" and there was not "anything else that would rise to the level of probable cause \*\*\* that [he] could file that [had] not been filed."

¶ 7 The court asked defendant if the agreement recited was the agreement that he had reached with the State. Defendant asked to clarify that "at no time [would] the State seek[] now or in the future [to have] a civil commitment" as was "relate[d] to the cases involved here." The prosecutor confirmed that based on all the information known at that point, the State's Attorney's

office would not be petitioning for a civil commitment or filing petitions under the Sexually Dangerous Persons Act or the Sexually Violent Persons Commitment Act.

¶ 8 The trial court again asked if the recited agreement was the agreement defendant had reached with the State. The following colloquy took place:

"THE DEFENDANT: It is hard to explain, I'm not really good with words.

THE COURT: Or, I don't mean to interrupt you, would you like some time to talk to [your attorney] before you—

THE DEFENDANT: Uhm, I'm sure [he] has more pressing issues.

THE COURT: We have all afternoon.

MR. NEAL: Well actually, no.

THE COURT: I do.

MR. NEAL: I told him that he does not have to do this today if he doesn't want to, I told him that he is free to go back over to the jail.

THE DEFENDANT: From what I'm told this is, it has to be done today."

¶ 9 Neal explained the State's offer was only "on the table" for that day and that he told defendant that he did not have to take the plea deal. Defendant indicated that he thought the sentence was excessive.

"THE COURT: Okay. So I'm guessing, I'm hearing that you don't want to do this today?

THE DEFENDANT: I don't really feel like I have a choice, I am afraid of the consequences if I don't."

¶ 10 The court offered defendant additional time to consider the offer. A lengthy discussion

was held off the record. When returning on the record the trial court stated, "we are going to start at square one." The trial court directed the prosecutor to recite the terms of the plea agreement.

The prosecutor stated the same terms previously stated.

¶ 11 Defendant asked, "outside of what [the State] has here in front of [it], \*\*\* what other cases may be pending or prominent?" The prosecutor responded as follows:

"[A]s of right now there are no specific cases that I am aware of that would come even close to the threshold that I think is necessary for me to file a new charge.

[Defendant], I think, may be aware that somewhat antidotally there is information out there that law enforcement could follow leads that could result in other charges, but at this point, in so far as I have been advised any way, there, that does not include any additional identified victims."

¶ 12 Defendant asked for information for "at least the new cases" to "still be disclosed." The prosecutor said that he would provide defendant's attorney with the information.

¶ 13 The trial court asked if defendant had any other questions. Defendant indicated that pleading guilty was a "big step" and he wanted to make sure that he knew "absolutely everything that [he] was pleading guilty to." The trial court asked if the agreement stated was the agreement that defendant had reached with the State. Defendant stated that it was "not exactly what [he] would want, but [he was] agreeing with the State." The court clarified, "So that is your agreement. Correct?" Defendant replied, "Yes."

¶ 14 The factual basis for the plea indicated that the victim was 15 years old when she met the 26-year-old defendant in 2007. Defendant and the victim had sexual intercourse on two separate occasions in December of 2007. The parties stipulated to defendant's criminal history of

convictions for two burglaries, aggravated criminal sexual abuse, sex offender loitering in a school zone, and contributing to the delinquency of a minor. As a result of defendant's criminal history, he was subject to a mandatory Class X sentencing range of 6 to 30 years of imprisonment and 4 years of MSR.

¶ 15 The trial court admonished defendant of the nature of the offenses and possible penalties. Defendant was informed that he was presumed innocent and the State was required to prove his guilt beyond a reasonable doubt. He was admonished that he had a right to a trial, to see and hear the witnesses testify against him, and to have his attorney cross-examine the witnesses. He was further admonished that he had the right to present evidence and witnesses in his own defense, testify, and be represented by an attorney.

¶ 16 Defendant said that he understood his rights and understood that by pleading guilty he would be giving up his right to a trial. He confirmed that he wished to plead guilty and that he had signed a written guilty plea form.

¶ 17 The trial court asked defendant if anyone "force[d]" or "threaten[ed]" him to plead guilty. Defendant said, "Define that." The trial court asked defendant if he was making the decision to plead guilty of his own free will or if anyone threatened to do harm to him if he did not plead guilty. Defendant said, "Define harm." The trial court indicated he was referring to physical harm. Defendant stated, "No."

¶ 18 The trial court asked defendant if he had been coerced to plead guilty. Defendant stated, "I want to be completely honest as I stand here today, I am pleading guilty to certain things and I don't think guilt or innocence even matters in this case to a lot of people, just, I'm not the greatest with words." He then stated, "I think it is in my best interest to plead guilty."

¶ 19 The trial court accepted defendant's guilty plea and sentenced defendant in accordance with the plea agreement. Defendant later filed a motion to withdraw his guilty plea. The motion alleged that defendant's plea was involuntary and that defendant did not fully understand the consequences of his guilty plea. New counsel was appointed to represent defendant.

¶ 20 At the hearing, defendant testified that his education level was "college and then some." At the time of the plea hearing defendant had been in jail for four months. Defendant was allowed to review the discovery in this case. Two potential witnesses for the defense threatened that if defendant did not accept the plea agreement "they were going to mess with the cases." At the time of the guilty plea hearing, defendant knew that he had three cases pending against him involving three different victims and four counts of aggravated criminal sexual abuse. Defendant knew that he was facing 6 to 30 years of imprisonment on each of the four counts and could have received consecutive sentences totaling 120 years of imprisonment. Defendant took the possibility of being sentenced to 120 years of imprisonment into consideration when he agreed to the 25-year plea offer.

¶ 21 The trial court denied defendant's motion to withdraw his guilty plea. Defendant's attorney subsequently filed a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). On appeal, this court remanded for new postplea proceedings because the Rule 604(d) certificate was untimely. *People v. Moreno*, No. 3-10-0374 (2011) (unpublished order under Supreme Court Rule 23).

¶ 22 On remand, defendant's counsel filed a certificate of compliance with Rule 604(d). No amendments were made to defendant's previous motion to withdraw guilty plea.

¶ 23 At the new evidentiary hearing, Neal testified that defendant was taken into custody on

case No. 08-CF-500. Prior to going into court on the guilty plea hearing in this case, defendant had been informed of the State's plea offer. Defendant was told that the State had obtained additional information and additional charges may be filed. Neal described the offer to defendant as being made to wrap up all existing cases or potential cases. Neal informed defendant he was not obligated to accept the offer.

¶ 24 Defendant testified that he had "one year of college with several years of post school." Defendant was in jail for 164 days prior to the plea hearing. At the time of the plea hearing, three cases were pending against defendant. Neal told defendant that the prosecution was starting "upwards of 30 other charges," but "it could be a bluff." Neal said that he had no information about the additional potential charges. Defendant was "completely freaked out." Defendant was told that he "had that moment and that moment only to make a decision." Defendant testified that Neal "initiated the threat of the invisible charges" so that he did not know what cases to which he pled guilty. Defendant believed that if the threatened additional charges were not supported with some evidence in discovery he would be able to withdraw his guilty plea. Defendant was never provided with any information about the uncharged offenses. Police reports subsequently obtained by defendant indicated that there were far less than 30 potential charges. If defendant knew about the nature of the State's investigation into additional charges he would not have entered into a guilty plea.

¶ 25 The trial court denied defendant's motion to withdraw guilty plea. Defendant appealed.

¶ 26 ANALYSIS

¶ 27 On appeal, defendant argues that the trial court abused its discretion in denying his motion to withdraw guilty plea because he involuntarily pled guilty while under extreme duress.

¶ 28 A defendant does not have an absolute right to withdraw a plea of guilty. *People v. Pullen*, 192 Ill. 2d 36 (2000). However, a defendant should be allowed to withdraw his plea where his plea was not constitutionally entered. *People v. Manning*, 227 Ill. 2d 403 (2008). A defendant may challenge the constitutionality of his guilty plea either by claiming that he did not receive the benefit of the bargain he made with the State or by alleging that the plea of guilty was not voluntary or with full knowledge of the consequences. *People v. Whitfield*, 217 Ill. 2d 177 (2005).

¶ 29 A motion to withdraw a guilty plea should be allowed where it appears that either: (1) the plea was based on a misapprehension of the facts or law, (2) the plea was the result of misrepresentation by counsel, (3) there is doubt as to the guilt of the defendant, (4) defendant has a defense worthy of consideration by a jury, or (5) the ends of justice would be better served by a trial. *Pullen*, 192 Ill. 2d 36; *People v. Morreale*, 412 Ill. 528 (1952). A trial court's decision whether to allow a defendant to withdraw a guilty plea is within the sound discretion of the trial court and will not be disturbed unless the court abused its discretion. *People v. Davis*, 145 Ill. 2d 240 (1991).

¶ 30 Here, defendant's guilty plea was knowing and voluntary. At the time of the plea, defendant knew he did not have to accept the plea and understood that he had a right to a trial. The State's one-day plea offer did not coerce defendant into pleading guilty, nor was he otherwise forced to accept the plea. Defendant was in jail for 164 days leading up to the plea hearing and had ample time to contemplate proceeding to trial on the charges against him. Defendant was informed of the plea offer and discussed it with his attorney. Defendant made a knowing choice to plead guilty in exchange for two 25-year concurrent sentences instead of going to trial with the



possibility of receiving up to 120 years in prison.

¶ 31 The unknown potential charges have no bearing on defendant's plea. The record indicates that the State was very clear in indicating that the agreement involved the three pending cases. Defendant asked repeated questions about potential charges. The prosecutor indicated the State could not file any charges in regard to the current information in the State's possession. The prosecutor indicated that the State's information would not rise to the level of any additional charges. Therefore, defendant was aware that the plea deal involved only the pending charges and knowingly and voluntarily pled guilty.

¶ 32 Accordingly, the trial court did not abuse its discretion by denying defendant's motion to withdraw guilty plea.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, the judgment of the circuit court of Whiteside County is affirmed.

¶ 35 Affirmed.